

CUSTODY OVER CHILDREN

Diana Shakula, student

Dyakovych M., Assistant Professor (Law), Research Advisor

Natalia Hrynya, Associate Professor, Language Consultant

Lviv National University after Ivan Franko

A custodial parent is a parent who is given physical or legal custody of child by court order. A child-custody determination means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child.

Legal custody of a child means having the right and the obligation to make decisions about a child's upbringing. The custody is extended to a child under the age of fourteen. The custody, care is granted by the Custody and Care Authority, as well as by court. Parents with legal custody can make decisions about the child's schooling, religious upbringing and medical care. Furthermore, there are some injunctions for custodians provided with Ukrainian civil law. Without the guardianship and trusteeship body's approval, the guardian shall not be entitled to waive the ward's property right, provide written obligations on behalf of the ward, enter into agreement that are subject to the notary witness and / or state registration including agreements on partitioning or exchange of dwelling house and apartment, enter into agreements on other valuable property.

The norms that regulates legal relations in this sphere are enshrined in the current legislation of Ukraine, namely: in Chapter 19. Chapter "Custody and Care of Children" of the Family Code of Ukraine, in Chapter 6 "Guardianship and Trusteeship" of the Civil CODE of Ukraine, in the different Laws of Ukraine: the Law of Ukraine "On Protection of Childhood" and the Law of Ukraine "On Provision of Organizational and Legal Conditions for Social Protection of Orphans and Children without Parental Care" and other regulations of Ukraine.

Custody of children is established if the parents are dead, unknown, recognized in court by the missing or dead person. Custody can also be established during the life of parents in some cases.

Under the Family Code of Ukraine a person that has attained the full age and is legally capable may be custodian, caretaker of the child upon consent of the latter. When appointing a custodian or caretaker for a child, the Custody and Care Authority takes into consideration personal identity of the person, his/her ability to bring up a child, his/her attitude towards children, as well as the wish of the child himself/herself. A person that abuses alcohol, drugs, a person deprived of parental rights, as well as a person whose interests are incompatible with the interests of the child may not be a custodian.

If a child permanently lives in a child care center or health institution, functions of the custodian and caretaker in respect of the child are performed by the administration of these institutions.

The custodian, caretaker shall bring up the child, care about his/her health, physical, mental, and spiritual development, as well as ensure that the child obtains full general secondary education. A custodian, caretaker has the right to determine, at his own discretion, ways in which the child should be educated, taking into account the child's views and recommendations given by the Custody and Care Authority. A custodian, caretaker has the right to demand that the child should be returned back from any person that keeps him/her against law or judicial decision.

A custodian, caretaker may not obstruct communication of the child with his/her parents and other relatives unless such a communication is contrary to the interests of the child.

Custody over children shall be terminated if a child is returned to parents (adoptive parents) or if the ward attains fourteen years. In this case the person who performed guardian's duties shall become a trustee without special decision thereon. Guardianship shall also be terminated in case of the restoration of legal capability of a natural person recognized as legally incapable.

In conclusion, it should be said that the institution of custody is a very important part of national law that should be regulated in a proper way because it comes to children which should be protected as well as it is possible.

References:

1. Конституція України, прийнята на V сесії Верховної Ради України 28.06.1996 р. // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.
2. Конвенція ООН «Про права дитини» від 20.11.89 р. – Київ : Укр. прав. фундація. Вид-во Право, 1995.
3. Декларація ООН «Про соціальні та правові принципи стосовно захисту і благополуччя дітей, особливо при передачі дітей та їх усиновленні на національному та міжнародному рівні» // Права людини і професійні стандарти для юристів в документах міжнародних організацій. – Київ : Укр. амер. Бюро захисту прав людини, 1996. – С. 82.
4. Сімейний кодекс України від 10.01.2002 р. // Відомості Верховної Ради України. – 2002. – № 21–22. – Ст. 80–135.
5. Ромовська З. В. Сімейний кодекс України: науково-практичний коментар / З. В. Ромовська. – Київ : Видавничий Дім "Ін Юре", 2003. – 523с.
6. Закон України "Про охорону дитинства" від 26.04.2001 р. // Відомості Верховної Ради України. – 2002. – № 10. – ст. 70.
7. Сучасний англо-український юридичний словник : понад 75 тис. англ. термінів і стійких словосполучень / уклад. : Л. В. Мисик, І. В. Савка ; за наук. ред. В. Т. Нора ; Львів. нац. ун-т ім. Івана Франка. – Київ : Ін Юре, 2018. – 1352 с.